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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/540,148	03/31/2000	Peter T Fry	80934F-P	1747

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PATENT LEGAL STAFF
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EXAMINER

CHANG, SABRINA A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 02/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/540,148

Applicant(s)

FRY ET AL.

Examiner

Sabrina Chang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-17, 20-27, 30 and 40-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-17, 20-27, 30 and 40-76 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Applicant's amendment to claims 1, 11, 21, 40, and 50 have been considered.

Response to Arguments

Applicant's arguments, stated in Paper 13 – 12/11/03, have been considered but are not persuasive.

Applicant asserts that the application of Hoekstra is improper. Examiner respectfully disagrees. While the context of the two systems are not exactly the same, Hoekstra and the applicant's invention lie in the same general field of graphic and image editing and processing – for the purpose of eventual publication, printing or ordering.

Applicant argues specifically that 1) the meta data transmitted with the low-resolution image (from the user to the server) does not contain information about the high-resolution image and 2) that the user does not transmit the high resolution image after receiving feedback from the server.

With respect to the meta data, examiner respectfully asserts that while Hoekstra undeniably does not disclose the transmission of “meta data”, as the applicant recites, the transmission of information relating to the image in general inherently comprises information regarding the original, high resolution image.

With respect to applicant's argument that Hoekstra does not disclose transmitting the high-resolution image after receiving feedback from the server, examiner respectfully asserts that there is no explicit teaching *away* from this capability. In that the user can connect to and send information over the communication network, his/her capability to transmit the high-resolution image is readily available.

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Further, as discussed in the background of the invention “digital image files are often generated at one location and modified, adjusted corrected or made ready for use at a different site.” [Col 1, Line 18]. Hoekstra essentially discloses that on-site high resolution image editing is already well known in the art, inherently comprising sending a high-resolution image from a user to a service provider.

Finally, with respect to applicant’s assertion that the application of Sacca, to teach the uninterrupted transmission of data, was improper, examiner respectfully concedes on this argument. However, applicant’s arguments are moot in view of a new rejection of claims 10, 20 and 30.

A revised statement of rejection follows.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 11, and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the “software” functions and how it is “used”. There is no explanation of how the “software” specifically relates to the “manipulation” of each image or what such “manipulation” comprises. It is also unclear how and where the high-resolution digital image files are transmitted to after using the software.

Claims 21 and 50 recite the limitation "said software". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 11-17, 21-27, and 40-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoekstra et al. U.S. Patent No. 6,304,277.

Hoekstra et al. discloses a system and method for more efficient modification of digital images. Hoekstra et al. discloses that the outsourcing of digital image modification - by transmitting high-resolution digital images from an image creator to an image processor, via any type of data transmission line, and having the processor return a modified image - is well-known in the art [Background of the Invention]. However, transferring high-resolution digital images is slow "point to point" [Col 1, Line 53]. The invention disclosed in the art of record seeks to eliminate inefficiencies and delays caused by the transmission of high-resolution images [Col 5, Line 3].

An image creator generates a high-resolution image at their location. The point of creation can include photo studios having digital photographic equipment (where the device capturing the image is a camera), design firms having desktop scanning capabilities (where the device is a scanner) or photo labs having compact disk image generation facilities (where the device is a CD) [Col 4, Line 12]. The creator then can make a compressed, low-resolution proxy of his/her original/high-resolution image file (obtaining a low resolution digital image file and a high resolution digital image file) [Col 2, Line 34]. The proxy image is generated using any number of commercially available

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compression techniques, such as those found within any number of software packages (user using software with respect to said image) [Col 4, Line 44].

The proxy low-resolution image is transferred from the creator's computer to the processor's computer, via a communications network (transmitting image file to a photoservice provider over a communications network) [Col 2, Line 53]. With the low-resolution image, the image creator sends a job ticket-which enumerates the corrections and/or image desired (metadata transferred with the low-resolution image) [Col 5, Line 15].

The image service provider at a remote location then decompresses the proxy low-resolution file, reviews the creator's job ticket and generates a script of modifications (service provider providing feed back to user based on image file, inherently comprising a negative message if the image is of insufficient quality for reproduction) [Col 2, Line 55]. These modifications are sent back to the image creator who then applies the script to the original, high-resolution image to produce a corrected high-resolution digital image [Col 5, Line 55].

High resolution and low resolution are, by definition relative. Hoekstra et al. explicitly discloses that the high resolution and low-resolution files referred to may vary greatly in size and in some instances overlap (low-resolution image is not greater than 200 x 150, where the high res is no less than 780 x 560, where low res is no greater than 50% of high resolution image) [Col 4, Line 32].

In specific reference to claims 1, 5 – 7, 11, 15 – 17, 21, 25 – 27, 40, 50, 54 – 56 Hoekstra et al. does not explicitly does not comprise placing an order for goods with

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respect to the image, where the photoservice provider fulfills the order – i.e. the photoservice provider is a photofinisher.

A reference is reasonably pertinent if even though it may be in a different field from that of the inventor's endeavor, it is one which because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem. *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F. 2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993). While the system of Hoekstra et al. does not specifically pertain to the modification of images for commercial purchase, it does relate specifically to the modification of images for commercial/public use [Col 1, Line 30]. Hoekstra et al. specifically includes a commercial element – i.e. the relationship between the image creator and the photoservice provider [Col 2, Line 17]. Hoekstra et al. and the applicant's invention both fall within the same general field - image processing - and more importantly seek to solve a similar problem – i.e. eliminating the inefficiencies and troubles involved in transmitting a high resolution image [Col 5, Line 3].

Applicant discloses that transmission of images over a communications network for remote processing and eventual purchase is notoriously well known in the art of photofinishing services [Specification, Background of the Invention].

In that the image creator is already paying for the services of the photo-processing service, to modify and alter his/her original images, it therefore would have been obvious to one skilled in the art at the time to modify the efficient image transfer and processing system of Hoekstra et al. to include another commercial element, allowing the image creator to purchase their modified image from the remote photoservice provider, as well known in the art of photofinishing services. This would provide an image creator with a

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more streamlined, cost and time-effective method of obtaining commercially/publically useable images.

Claims 10, 20 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoekstra et al. U.S. Patent No. 6,304,277, as applied in claims 1, 11, and 21, in view of Hopkins U.S. Patent No. 6,282,462.

Hoekstra et al. does not explicitly disclose that the transmission of high-resolution image may be interrupted and resumed at the same place where transmission was interrupted.

Hopkins shows a method for consistent transmission of image data preventing data loss [Col 3, Line 61]. Given the unreliability of communications' networks it would have been obvious to modify the system of Hoekstra et al. to provide consistent transmission of image data, as taught by Hopkins, in order to maintain customer satisfaction and prevent any frustration involved at having to restart the image transmission process.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shiota et al. (6,324,521) and Hara et al. (US 2002/0038323) disclose image processing order systems. Neither system however discloses the sending of low resolution images from the user to the server for review.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabrina Chang whose telephone number is 703 305 4879. The examiner can normally be reached on 8:30 am - 5:30 pm Mon.- Fri..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Smith can be reached on 703 308 3588. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1113.

SC



Jeffrey A. Smith
Primary Examiner